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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/774,372
Filing Date: February 10, 2004
Appellant(s): CHURCH, CRAIG D.

MAILED

DEC 26 2007

GROUP 3600

Craig D. Church
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/9/2007 appealing from the Office action mailed 5/8/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

Application/Control Number:
10/774,372
Art Unit: 3625

Page 3

(8) Evidence Relied Upon

| | | |
|-------------------|-------------------|---------|
| US 6317718 B1 | Fano | 11-2001 |
| US 20020138372 A1 | Ludtke | 09-2002 |
| US 20020194081 A1 | Perkowski | 12-2002 |
| US 20030027555 A1 | Malackowski et al | 02-2003 |
| US 6937998 B1 | Swartz et al | 08-2005 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 7, 11-12, 18, 20-21, 23-24, and 42-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fano (US 6317718) in view of Swartz (US 6937998).

Regarding claim 1 and related claims 12, 20-21, 45, and 48-49 Fano teaches:

determining whether a portable device is or is not located within a first site (see at least: col. 47 lines 20-24); Note: A store closest to the user containing items of interest constitutes a *first site*;

wherein when the portable device is located within the first site (e.g. when the device is within range of the store having items of interest):

sending a menu of items located at the first site to the portable device for displaying to the user (see at least: col. 47 lines 61-66); Note: the system suggests items of interest (i.e. *menu*) using the display;

receiving, from the portable device, a selection by the user of at least one item from the menu of items located at the first site (see at least: col. 48 lines 22-25);

sending location information regarding the at least one item selected from the menu of items at the first site to the portable device for displaying to the user (see at least: col. 48 lines 22-25); Note: alerting the user to an alternate “local retailer” constitutes *location information*.

Additionally, when the portable device is not within range of the first site (store containing items of interest) and is within range of a second site (a store not containing the items of interest), Fano teaches providing a generic menu of items from the store not containing items of interest (see at least: col. 47 line 66-col. 48 line 26). If one of the items displayed is selected, location information such as alternative local retailers having the item is displayed (Note: this aspect parallels *a second processing logic to receive item selections, transit them to a server, and receive location information* as in claim 21). Though Fano teaches such aspects as suggesting local retailers and providing a menu of items from a second site, Fano does not explicitly teach *sending to the portable device a menu of sites located within a vicinity of the portable device for displaying to the user and receiving from the portable device a selection of a second site from the menu of sites by the user* when the portable device is not located within the first site.

In the same field of endeavor, Swartz teaches a portable terminal carried by a user and in wireless communication with a local area network for displaying data based on the physical location of the user (see at least: abstract). More specifically, Swartz teaches where a user is located in a common area (i.e. when the user is not within range of a store having items of interest and thereby *when the portable device is not located within the first site*), selecting a product category such as clothes, *sending a menu of sites located within the vicinity of the portable device* (see at least: Fig. 10 (note #'s 110, 112, 114), col. 9 lines 47-57) and *receiving a selection of a second site from the menu of sites* (see at least: Fig. 10, col. 9 lines 47-57).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Fano to have included *when the portable device is not located within the first site sending to the portable device a menu of sites located within a vicinity of the portable device for displaying to the user and receiving from the portable device a selection of a second site from the menu of sites by the user* as taught by Swart in order to allow a user to locate a particular supplier of products or services to expedite the processing of a mall transaction (see at least: Swartz, col. 9 line 65-col. 10 line 3).

Regarding claims 4, 7, 11, 18, 23-24, and 47 Fano in view of Swart teaches:

(4) *further comprising establishing a connection between the portable device an a server via a wireless connection or an optical connection* (see at least: Swartz, Fig. 1, col. 4 lines 34-47).

(7) and related (47) *wherein the first site includes a store and the second site includes a store* (see at least: Fano, col. 47 lines 20-24 and 61-66; Swartz, abstract, Fig. 2, Fig. 10).

(11) *wherein the location information includes a location of each of the at least one selected item from the menu of items from the first or second site* (see at least: Fano, col. 47 line 61-col. 48 line 26).

(18) *wherein the processing logic is further configured to send the selection of the at least one item to the server via an e-mail message* (see at least: col. 32 line 60-col. 33 line 6).

(23) *wherein the first processing logic sends an indication to the portable device indicating whether the portable device is located at a particular site* (see at least: col. 47 line 58-col. 48 line 26, Fig. 27). The Examiner notes that displaying the particular items of interest indicates that the user is at a particular site.

(24) *displays at least one menu when the second processing logic determines that the device is not located at the first site, and*

refrain from displaying the at least one menu when the second processing logic determines that the device is located at the first site (see at least: col. 47 line 58-col. 48 line 26, Fig. 27). The Examiner

notes that a menu of general merchandise (i.e. at least one menu) is displayed when the user is not at a particular site and a specific items of interest menu is displayed when the user is at a particular site; thereby, the system refrains from showing the general merchandise menu (i.e. the at least one menu) when at the first site and instead displays the specified items of interest menu.

Regarding claims 42 and related claims 43-44 and 46, Fano in view of Swartz teaches when the portable device is not located within the first site:

sending to the portable device a menu of items located at the second site for displaying to the user,

receiving from the portable device a selection by the user of at least one item from the items at the second site, and

sending location information regarding the at least one item selected from the menu of items at the second site to the portable device for displaying to the user (see at least: Fanò, col. 47 line 66-col. 48 line 26). Note: when the portable device is not within range of the first site (store containing items of interest) and is within range of a second site (a store not containing the items of interest), Fano teaches providing a generic menu of items from the store not containing items of interest. If one of the items displayed is selected, location information such as alternative local retailers having the item is displayed.

3. **Claims 10, 14-15, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fano in view of Swartz, as applied above, in further view of Perkowski (US 20020194081).**

Regarding claims 10, 14, and 19, Fano in view of Swartz teaches all of the above and further teaches a PDA with email capabilities (see at least: col. 32 line 60-col. 33 line 6). Fano in view of Swartz, however, does not expressly teach providing a user of the portable device with an option of having results sent via e-mail to an e-mail address provided by the user via the portable device. Perkowski teaches providing a user of the portable device with an option of having results sent via e-mail to an e-mail address provided by the user via the portable device (see at least: 0915, 0922, 0935, 1125-1127). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Fano in view of Swartz to have included providing a user of the portable device with an option of having results sent via e-mail to an e-mail address provided by the user via the portable device as taught by Perkowski in order to request and obtain information about a service-provider's consumer service so as to make informed/educated purchases (see at least: Perkowski, abstract).

Regarding claims 15 and 25, Fano in view of Swartz teaches all of the above as noted and further teaches implementing speech recognition and touch sensitive displays (see at least: Fano, Fig. 26; Swartz, col. 9 lines 47-57). Fano in view of Swartz, however, does not expressly teach wherein the processing logic is further configured to receive the selection of the at least one item when the user touches the touch screen with one of an electronic pen, a stylus, and a finger in an area where a representation of each of the at least one item is displayed on the display. Perkowski teaches wherein the processing logic is further configured to receive the selection of the at least one item when the user touches the touch screen with one of an electronic pen, a stylus, and a finger in an area where a representation of each of the at least one item is displayed on the display (see at least: 0037-0038, 0092,

0122, 0124). It would have been obvious at the time of invention to have modified the invention of Fano to have included a touch-screen display as taught by Perkowski in order to allow users to easy access and display information associated with a particular consumer product by simply touching the graphical image or icon of a particular consumer product displayed on the touch-screen enabled (see at least: Perkowski, 0124).

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fano in view of Swartz, as applied above, and further in view of Ludtke (US 20020138372).

Regarding claim 16, Fano teaches all of the above and further teaches the use of a touch sensitive screen (see at least: Fano, Fig. 26; Swartz, col. 9 lines 47-57). Fano in view of Swartz, however, does not teach *wherein the processing logic is further configured to receive the selection of the at least one item when the user writes a name of the at least one item on the touch screen with one of an electronic pen, a stylus, and a finger*. In the same field of endeavor, Ludtke teaches a system for locating products using a PDA or similar remote device (see at least: abstract). More specifically, Ludtke teaches *wherein the processing logic is further configured to receive the selection of the at least one item when the user writes a name of the at least one item on the touch screen with one of an electronic pen, a stylus, and a finger* (see at least: 0055). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Fano in view of Swartz to have included *wherein the processing logic is further configured to receive the selection of the at least one item when the user writes a name of the at least one item on the touch screen with one of an electronic pen, a stylus, and a finger* as taught by Ludtke in order to allow a user of a mobile wireless device to easily obtain location information by asking the remote device at any point using a pen and touch screen combination where a particular product or class of products are located (see at least: Ludtke, 0055).

5. **Claims 17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fano in view of Swartz, as applied above, and further in view of Malackowski et al. (US 20030027555).**

Regarding claims 17 and 26, Fano in view of Swartz teaches all of the above and further teaches the use of a touch sensitive screen and voice response (see at least: Fano, Fig. 26; Swartz, col. 4 lines 40-43, col. 5 lines 12-16, col. 9 lines 47-57). Fano in view of Swartz, however, does not explicitly teach wherein the processing logic is further configured to receive the selection of the at least one item when the user says a name of the at least one item. Malackowski teaches wherein the processing logic is further configured to receive the selection of the at least one item when the user says a name of the at least one item. (see at least: abstract, 0018, 0115). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Fano to have included wherein the processing logic is further configured to receive the selection of the at least one item when the user says a name of the at least one item as taught by Malackowski in order to allow a user of a mobile wireless device to easily obtain information via an IVR by simply speaking the product name (see at least: Malackowski, 0018, 0058).

(10) Response to Argument

Regarding claim 1 and Applicant's assertion on pages 12-14 that Fano fails to teach the feature of sending location information regarding a selected item, this assertion is strongly disagreed with. The claims read as follows:

sending a menu of items located at the first site to the portable device for displaying to the user

receiving, from the portable device, a selection by the user of at least one item from the menu of items located at the first site and

sending location information regarding the at least one item selected from the menu of items at the first site to the portable device for displaying to the user

Applicant's arguments are a clear attempt to breath additional meaning from the specification both into the meaning of the term *location information* and further into the interrelation of the claim elements without explicitly claiming additional features. Nowhere in the claims does there appear an explicit definition to what constitutes "location information", nor do the claims imply a specific type of location information. Fano teaches where a menu of items located at the first site is presented to the user (see at least: col. 47 lines 61-66). When the user selects at least one item from those items available, the system provides alternative retailers at which the product is located and purchasable (see at least: col. 48 lines 22-27). In other words, the alternate retailer(s) in the mall constitutes *location information* sent to the user because the alternate retailer(s) represent a location in the mall at which the selected item can be purchased. [Note: this rationale is also applicable to the arguments on pages 16-17 regarding claim 11].

Furthermore, on pages 14-16, Applicant alleges that Fano fails to teach “determining whether a portable device is or is not located within a first site”. The Examiner hereby asserts that, in teaching where a user within range of a store carrying items of interest is notified of those items of interest within the store, Fano effectively teaches analogous functionality to that of the claims. Fano teaches determining the location of the user using a GPS receiver and further determines whether the user is in range of a site that has items of interest (i.e. the site containing items of interest constituting the claimed “first site”) (see at least: col. 47 lines 20-24 and col. 47 lines 61-66). When in range, Fano presents the user with a menu of the items of interest available from the store containing the items of interest. In other words, Fano is able to determine the location of the user and determine whether the location of the user is within a range of a first site having specified items of interest or not within a first site (i.e. at a second site not having items of interest). To be clear on the record, the first site is not merely just the immediate or nearby stores; rather, the first site as found in Fano is a nearby or immediate store that contains items of interest.

Applicant further contends that determining the user to be in range of a store is different than determining when a device is actually located within a store, but fails to provide rationale for the contention. Pertinent in Fano is the user’s proximate position to the stores as this position to nearby or immediately surrounding stores affords the user the ability to receive a menu of items contained in the store (the items being either generic or “of interest” to the user) and subsequently purchase items by entering the store and performing a purchasing process. To the same accord, the claimed invention affords the same functionalities. Once a user is within a first site, a user can receive a broadcast of menu of items and purchase the items inside the store. In

Application/Control Number:
10/774,372
Art Unit: 3625

Page 13

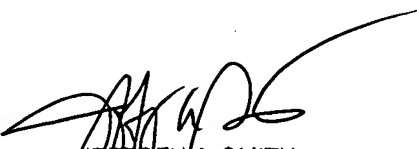
this regard, it becomes clear that the functionality of Fano is analogous to the functionality of the claimed invention.

Regarding pages 17-30 of Applicant's remarks, these remarks are substantially similar to those outlines above. For at least the reasons above, those remarks are not persuasive.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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